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September 15, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Letter in Support of the American Bankers Association Petition for Reconsideration and Modification of the Commission's Declaratory Ruling and Order Regarding the Telephone Consumer Protection Act

Dear Chairman Wheeler:

The Independent Community Bankers of America¹ (ICBA) is submitting this letter in support of the Petition for Reconsideration (Petition) filed on August 8, 2015 with the Federal Communications Commission (FCC or the Commission) by the American Bankers Association (ABA). The ABA is requesting reconsideration and modification of the exemptions for "free end user calls" granted to financial institutions as described in the Commission's Declaratory Ruling and Order (the Ruling) adopted on June 18, 2015. The Ruling carves out an exception to the Telephone Consumer Protection Act's (TCPA) prior express consent requirement for certain exigent circumstances. Specifically, the ABA requests reconsideration of the requirement that the exempted calls and texts be sent only to the wireless number a customer has previously provided the financial institution. ICBA shares the ABA's concern that the exemption's condition referred to above will severely limit the ability of banks to send, and of the customers to receive, covered urgent calls and texts.

¹ The Independent Community Bankers of America®, the nation's voice for more than 6,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

With 52,000 locations nationwide, community banks employ 700,000 Americans, hold \$3.6 trillion in assets, \$2.9 trillion in deposits, and \$2.4 trillion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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In the Ruling, the FCC, at the ABA's request, exempted calls and text messages that: 1) prevent fraudulent transactions or identity theft, 2) alert consumers of data security breaches, 3) prevent identity theft following a data breach, and 4) notify the consumer of money transfers. Among other conditions the Commission places on the exemption of these types of urgent messages, it requires that the voice calls and text messages be sent only to the wireless telephone number provided by the financial institution's customer. This condition on time-sensitive notifications prohibits the use of customer numbers obtained from reliable third-party sources, thereby restricting the universe of affected consumers the financial institution can contact. The "provided number restriction" also creates a new and burdensome record-keeping requirement. ICBA urges the FCC to reconsider and modify this requirement to help ensure that community banks are not limited in their ability to provide important and urgent messages to their customers.

ICBA is concerned that the "provided number restriction" will make it far more difficult for a community bank to contact its customers regarding fraud or security breaches. For various reasons, mobile numbers a customer provides at account opening may, at the time of the fraud prevention notification, no longer be valid. Understanding this, a community bank may utilize wireless numbers obtained from reliable non-customer sources to contact their customers about identity theft or data breaches. Limiting the exemption to only numbers that were provided by the customer will reduce the chances of a community bank ultimately delivering the urgent notification to the customer. As stated in the ABA's Petition, the condition severely restricts the universe of customers who will receive these important time-sensitive messages and undermines the institution's ability to prevent or reduce harm to as many customers as possible.

ICBA believes that the "provided number restriction" indirectly imposes upon community banks a burdensome and complicated record-keeping requirement. According to the exemption, the financial institution must confirm that the mobile number to which it intends to send a time-sensitive alert was obtained directly from the customer and not a different source. This condition requires a community bank to ensure that it obtained the mobile number directly from the customer, to create and continuously maintain documentation of that action and to retain that documentation in perpetuity. Given the threat of legal action challenging whether or not the community bank obtained the number directly from the customer, ICBA agrees with the ABA's assertion that a financial institution will be discouraged from sending urgent messages to mobile numbers that customers provided during a telephone call or in an in-person conversation. Without an audio recording of those conversations, the community bank may be exposed to claims that the number was not provided by the customer.

ICBA supports the ABA's Petition for Reconsideration and strongly believes that modification of the "provided number restriction" will assist community banks in preventing or reducing the harm of identity theft or data breaches to countless consumers. Modification of this condition to the exigent circumstances exception will further encourage community banks to send urgent messages without the threat of litigation.

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If you have any questions or if you would like to discuss the Ruling or the “provided number restriction”, please feel free to contact me at kori.kaldor@icba.org or at (202) 659-8111.

Sincerely,

Kori Kaldor
Assistant Vice President and Regulatory Counsel

Cc: Jonathan Thessin, Senior Counsel, American Bankers Association

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